IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 496 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYANBHAI GALBABAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 496 of 2003

MR ANIL N MEHTA for Petitioner No. 1

MR IM PANDYA Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/07/2003

ORAL JUDGEMENT

1. This appeal is preferred against the judgment and order passed by the ld. Addl. Sessions Judge, Fast Track Court No. 2, Mehsana on 10.2.2003 in Sessions Case

No. 211/2000.

2. The facts emerges that the complainant Shantaben wife of present appellant - Parmar Naranbhai Galbabhai filed a complaint before the police on 28.6.2000 and stated that on the same day in the evening at about 7.30pm she had altercations with her husband-appellant herein and at that time both of them were alone in the house. They are staying at Visnagar in hutment. It is the case of the complainant that the accused-appellant herein was in habit of indulging in gambling and for that purpose, present appellant was always in need of money and complainant Shantaben was always refusing to give money for gambling. On that day, complainant Shantaben again refused her husband to give money and, therefore, the accused appellant was provoked and uttered abuses. The complainant asked him to keep restraint but the accused appellant snatched one "Rampuri" knife and started to give blows on her indiscriminately. According to the prosecution case, on various parts of body she received in all 16 blows. She shouted and became unconscious. The appellant-accused ran away from the spot. She was taken to Visnagar Hospital from where she was transferred to Civil Hospital, Mehsana. Thereto, since her condition was found serious, she was transferred to Civil Hospital, Ahmedabad. On filing complaint before the police from the hospital, the offence was registered against the present appellant and he was arrested. After investigation was over, charge-sheet for the offences punishable under sec. 307, 504 of Indian Penal code and for the charges under sec. 135 of the Bombay Police Act was submitted by the police before the ld. Judicial Magistrate First Class, Visnagar. The case was committed to the Court of Sessions and ld. Addl. Sessions Judge, Fast Track Court no. 2, Mehsana registered the sessions case as No. 211/2000 and framed the charge against the appellant vide ex. 4. The appellant pleaded not guilty and, therefore, prosecution was called upon to prove the case. The prosecution examined in all 9 witnesses i.e. PW-1 Dr. Pravinkumar Popatlal Soni ex. 9, who treated the complainant at Civil Hospital, Mehsana, PW-2 Shantaben Naranbhai Parmar ex. 13, PW-3 Iqbalbhai Noor Mohmad Mansuri ex. 15 who recorded the dying declaration of the injured, PW-4 Hiralal Jethabhai Parmar ex. 18, panch of panchanama of scene of offence, PW-5 Dr. Manju Latta M. Anchaliya ex. 20, Medical Officer, Civil Hospital, Ahmedabad who treated the complaint, panchas of discovery panchanama by which the weapon "Rampuri" knife used in the offence and according to the prosecution case, discovered at the instance of the accused, are examined

as PW-6 and 7 at ex. 23 and 25 respectively. PW-8 Harshadkumar Ramjibhai Parmar who is the panch of the panchanama of recovery of blood stained clothes of the complainant ex. 26 and PW-9 Kakusinh Ranjitsinh Vaghela ex. 28 is the Investigating Officer. In addition to above testimonial collection of evidence, the prosecution also offered documentary evidence at ex. 11 a transfer letter from Visnagar Hospital, Medical Certificate of the complainant of Civil Hospital, Mehsana at ex. 12, complaint at ex. 14, Dying declaration at ex. 17, panchanama of scene of offence at ex. 19, the transfer letter from Mehsana to Civil Hospital, Ahmedabad is at ex. 21, medical certificate of Civil Hospital Ahmedabad at ex. 22, discovery panchanama at ex. 24 and FSL report at ex. 32 and 33. After recording of the offence and recording of the statement of the accused under sec. 313 of Code of Criminal Procedure, ld. Addl. Sessions Judge came to the conclusion that by the evidence of complainant who is injured witness and taking into consideration corroborating medical evidence, the case against the appellant-accused was proved beyond reasonable doubt for the charges under sec. 307 of Indian Penal Code, therefore, the ld. Addl. Sessions Judge convicted the accused for the charges under sec. 307 of IPC and sentenced him to undergo R/I of 5 years and imposed fined of Rs. 5000/, in default, R/I for one year. The accused-appellant was acquitted for the charges levelled against him under sec. 504 of IPC and for the charges under sec. 135 of B.P. Act. It was also directed by the ld. Addl. Sessions Judge that out of the amount of fine of Rs. 5000/-, an amount of Rs. 3000/- be paid to the complainant as compensation under sec. 357(1)(b) of the Code of Criminal Procedure.

3. Being aggrieved and dissatisfied with the above said judgment and order of conviction, this appeal is preferred by the ori. accused of the above said sessions case.

4. Ld. Advocate Mr. AN Mehta for the appellant and Ld. APP Mr. IM Pandya for the respondent-State were heard at length. The appeal came to be admitted by this court vide order dated 22.7.2003 and on request of bail, notice was issued and made returnable 29.7.2003, however, ld. advocate Mr. Mehta for the appellant urged before this Court to hear the appeal because on merits he has no submissions to raise and an endeavour before this Court would be to urge for reduction of sentence. Ld. APP Mr.Pandya also agreed to address this court in respect of appeal. So, at the request of the ld. advocates for the parties, the appeal was heard today.

5. Ld. advocate Mr. Mehta restricting his submissions on the part of reduction of sentence contended that the complainant injured is wife and the accused-appellant is husband, they belong to down trodden and very poor class of society. In heat of passion, it appears that the incident has occurred and unfortunately, the wife Shantaben was injured. The appellant accused at present is in jail, now repenting the act done in heat of passion, therefore, it was submitted that while no submissions are made in respect of merits, on humanitarian as well as on other ground the sentence imposed of imprisonment be reduced to the extent already undergone by the appellant. My attention was also drawn to the fact noted by ld. Addl. Sessions Judge in his judgment that the parties submitted compromise being husband and wife and the same was produced before the ld. Addl. Sessions Judge, but the same was not taken into consideration because the offence charged was punishable under sec. 307 of IPC and was not compoundable under sec. 320 of Cr.P.C., therefore, compromise came to be rejected by the ld. Addl. Sessions Judge. It was urged that though the compromise was rightly rejected by the ld. Addl. Sessions Judge, but the fact of compromise must looked into so far as reduction of sentence is concerned.

6. While Ld. APP was heard on behalf of the State.

7. Having heard both the ld. advocates for the parties and since no submissions are made in respect of the merits of the matter, the only issue which requires to be decided is whether the sentence imposed by the ld. Addl. Sessions Judge, Fast Track Court No. 2, Mehsana needs to be reduced as argued.

8. On making submissions on behalf of the appellant ld. APP was requested to ascertain the fact whether a compromise had actually taken place between the parties which Ld. APP has placed on record the statement of the complainant recorded by Police Sub Inspector, Visnagar on 26.7.2003 along with letter written by the P.I. Visnagar Police Station, Dist. Mehsana to D.S.P., Mehsana. These papers are taken on record. The fact of the compromise between the parties has been confirmed by the complainant in her above said statement. Along with other facts she has stated that her children are of marriageable age and the incident had occurred in provocation following the refusal on her part to part with money for the gambling.

She has sincerely urged that the sentence of her husband -appellant herein be reduced to already undergone.

9. True, it is that noncompoundable offence as envisaged under sec. 320 of Code of Criminal Procedure cannot be compounded and, therefore, the compromise was rightly rejected by the ld. Addl. Sessions Judge. At the same time, it must be noted that the parties are husband and wife. The circumstances of incident are otherwise ordinary occurrence between the spouse. Their marriage life has long standing. They have children of marriageable age and, therefore the incident appears to have occurred in provocation and almost 16 blows of knife was given to the wife by husband probably to prove the supremacy. The offence in the manner in which is committed, cannot be taken lightly but at the same time, while imposing punishment it becomes the duty of the court to take into consideration the objective of penology. Punishment should be deterrent and reformative. By reduction of the sentence, if these two objectives are achieved, the interest of justice would be served. The fact which requires to be taken into consideration is the social status of the parties and the relation of husband and wife. The other fact which must weigh with the court is in respect of compromise between the parties. More over, it is submitted by the ld. advocate for the appellant that the accused-appellant now repealing the act and that the injured wife urges before this Court to reduce the sentence. The Apex Court in the matter of Surendra Nath Mohanty and anr. v. State of Orissa, as reported in AIR 1999 SC 2181, under section 326 in respect of compromise for the charge under sec. 326 of IPC has observed as under:

> "8. We reiterate that the course adopted in Ram Pujan v. State of U.P. (AIR 1973 SC 2418:1973 Cri LJ 1612) and Mahesh Chand v. State of Rajasthan, (AIR 1988 SC 2111:1989 CriLJ 121) (supra) was not in accordance with law. However, considering the fact that parties have settled their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that appellants have already undergone 3 months imprisonment as per the sentence imposed on them, we think that ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5,000/on each of the accused under Section 326

read with Section 34, IPC. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellant concerned shall undergo simple imprisonment for a further period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs. 9,000/- also be paid to the injured as compensation."

10. The Apex Court in the matter of Ram Lal and anr. v. State of Jammu and Kashmir as reported in AIR 1999 SC 895, observed in paras-4 and 5 as under:

"4. It is apparent that when the decision in Mahesh Chand (AIR 1988 SC 2111) (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in Y. Suresh Babu (1987(2)JT (SC) 361) (supra) drawn. Hence, those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is admittedly, non-compounable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

5. However, considering the fact that parties have come to a settlement and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith."

11. In the above view of the matter, while considering this appeal for the reduction of sentence and while considering the fact that the parties belonged to down trodden and poor class of society, the ends of justice would be served if the sentence is reduced to the extent of already undergone by which both the objectives of penology reformative as well as deterrent would be achieved. No leniency can be shown to offender of

heinous crime, but when parties are so thickly related in this case as husband and wife an opportunity to them to live their life peacefully would certainly advance the cause of justice. Therefore, after verifying the records and papers as submitted by ld. advocate for the appellant and and after verifying the papers as submitted by ld. APP Mr. Pandya, it appears that the sentence of imprisonment awarded to the appellant is required to be reduced. For some days, during under-trial, the appellant was in jail and from the date of conviction i.e. right from 10.2.2003 till today the appellant is in jail. If we consider the period of imprisonment from 10.2.2003 till today the period of imprisonment comes to about 5 months and 20 days little less then six months. In the facts and circumstances of the case and in the interest of justice, this appeal while rejecting the same on merits requires to be allowed on the aspect of reduction of sentence and the sentence of imprisonment awarded by the ld. Addl. Sessions Judge is reduced to the period the appellant has already undergone which comes to about 5 months and 20 days for the charges levelled against the appellant under sec. 307 of IPC. Likewise, having regard to the financial position of the family of appellant, the order for imposition of fine which is imperative is also required to be laxed. In imprisonment already undergone the sentence of imprisonment, in default of fine is directed to be considered to be undergone, so the poor family would not be put to financial crunch and the compliance of mandatory provision of fine also is considered to be complied with.

12. In the above view of the matter, this appeal is partly allowed. The conviction of the appellant for the charge levelled against him under sec. 307 of Indian Penal Code is maintained, but sentence of imprisonment awarded by the Ld. Addl. Sessions Judge for five years R/I is set aside and substituted by the sentence of imprisonment already undergone by the appellant after the conviction which comes to about 5 months and 20 days. The order of ld. Addl. Sessions Judge imposing fine of Rs. 5000/- for the charge proved against the appellant under sec. 307 of Indian Penal Code is also set aside and no fine is imposed upon the appellant. Consequently, the direction of the ld. Addl. Sessions Judge to pay Rs. 3000/- by way of compensation by the appellant to complainant wife under sec. 357(1)(b) of Code of Criminal Procedure is also set aside. Remaining order of the ld. Addl. Sessions Judge in respect of muddamal is not interfered with and to the above extent the order and judgment impugned in this appeal is modified.

13. If the appellant is not required to be detained in jail for any other purpose, he be released forthwith by the jail authority.

(J.R. VORA, J.)

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